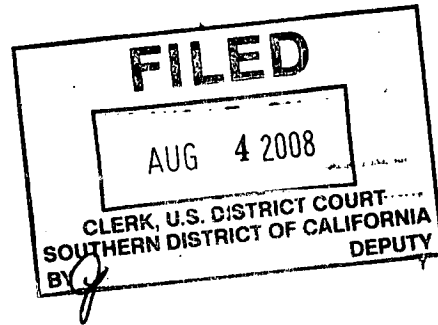


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7 Attorneys for the Plaintiff  
8 Steven Heath

'08 CV 1414 JM AJB

11 **UNITED STATES DISTRICT COURT**  
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13	Steven Heath	Case Number:
14		
15	Plaintiff,	Complaint For Damages
16	v.	Jury Trial Demanded
17	Legal Recovery Law Offices, Inc.	
18		
19	Defendant.	
20		

21 **INTRODUCTION**

- 22 1. The United States Congress has found abundant evidence of the use of  
23 abusive, deceptive, and unfair debt collection practices by many debt  
24 collectors, and has determined that abusive debt collection practices  
25 contribute to the number of personal bankruptcies, to marital instability, to the  
26 loss of jobs, and to invasions of individual privacy. Congress wrote the Fair  
27 Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter  
28 "FDCPA"), to eliminate abusive debt collection practices by debt collectors,

1 to insure that those debt collectors who refrain from using abusive debt  
2 collection practices are not competitively disadvantaged, and to promote  
3 consistent State action to protect consumers against debt collection abuses.

4 2. The California legislature has determined that the banking and credit system  
5 and grantors of credit to consumers are dependent upon the collection of just  
6 and owing debts and that unfair or deceptive collection practices undermine  
7 the public confidence that is essential to the continued functioning of the  
8 banking and credit system and sound extensions of credit to consumers. The  
9 Legislature has further determined that there is a need to ensure that debt  
10 collectors exercise this responsibility with fairness, honesty and due regard  
11 for the debtor's rights and that debt collectors must be prohibited from  
12 engaging in unfair or deceptive acts or practices.

13 3. Steven Heath, (Plaintiff), through Plaintiff's attorneys, brings this action to  
14 challenge the actions of Legal Recovery Law Offices, Inc. ("Defendant"),  
15 with regard to attempts by Defendant to unlawfully and abusively collect a  
16 debt allegedly owed by Plaintiff, and this conduct caused Plaintiff damages.

17 4. Plaintiff makes these allegations on information and belief, with the exception  
18 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which  
19 Plaintiff alleges on personal knowledge.

20 5. Unless otherwise stated, Plaintiff alleges that any violations by Defendant  
21 were knowing and intentional, and that Defendant did not maintain  
22 procedures reasonably adapted to avoid any such violation.

#### 23 JURISDICTION AND VENUE

24 6. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. §  
25 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.

7. This action arises out of Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 ("RFDCPA").

8. Because Defendant does business within the State of California, personal jurisdiction is established.

9. Venue is proper pursuant to 28 U.S.C. § 1391(c).

#### PARTIES

10. Plaintiff is a natural person who resides in the City of San Diego, County of San Diego, State of California.

11. Defendant is from the City of San Diego, the County of San Diego, and the State of California.

12. Plaintiff is obligated or allegedly obligated to pay a debt, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

13. Defendant is a person who uses an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and is therefore a debt collector as that phrase is defined by 15 U.S.C. § 1692a(6).

14. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a "debtor" as that term is defined by California Civil Code § 1788.2(h).

15. Defendant, in the ordinary course of business, regularly, on behalf of himself, herself, or others, engages in debt collection as that term is defined by California Civil Code § 1788.2(b), is therefore a debt collector as that term is defined by California Civil Code § 1788.2(c).

HYDE & SWIGART  
San Diego, California

16. This case involves money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a consumer debt and “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

#### FACTUAL ALLEGATIONS

17. At all times relevant to this matter, Plaintiff was an individual residing within the State of California.

18. At all times relevant, Defendant conducted business within the State of California.

19. Sometime before June 3, 2008, Plaintiff is alleged to have incurred certain financial obligations to Capital One Bank.

20. These financial obligations were primarily for personal, family or household purposes and are therefore a “debt” as that term is defined by 15 U.S.C. §1692a(5).

21. These alleged obligations were money, property, or their equivalent, which is due or owing, or alleged to be due or owing, from a natural person to another person and are therefore a “debt” as that term is defined by California Civil Code §1788.2(d), and a “consumer debt” as that term is defined by California Civil Code §1788.2(f).

22. Sometime thereafter, but before June 3, 2008, Plaintiff allegedly fell behind in the payments allegedly owed on the alleged debt. Plaintiff currently takes no position as to the validity of this alleged debt.

23. Subsequently, but before June 3, 2008, the alleged debt was assigned, placed, or otherwise transferred, to Defendant for collection.

24. On June 3, 2008, Defendant, on behalf of Capital One Bank, filed a lawsuit against Plaintiff in the Superior Court of California, County of San Diego, Case Number 37-2008-00084981-CL-CL-CTL.

25. Plaintiff was served with the aforementioned lawsuit on June 5, 2008.

- 1 26. This communication to Plaintiff was a "communication" as that term is  
2 defined by 15 U.S.C. § 1692a(2), and an "initial communication" consistent  
3 with 15 U.S.C. § 1692g(a).
- 4 27. This communication was a "debt collection" as Cal. Civ. Code 1788.2(b)  
5 defines that phrase, and an "initial communication" consistent with Cal. Civ.  
6 Code § 1812.700(b).
- 7 28. Subsequently, but within the thirty-day period described in 15 U.S.C. §  
8 1692(a), Plaintiff notified Defendant and/or Capital One Bank in writing, that  
9 this alleged debt, or some portion of it, was disputed.
- 10 29. Plaintiff then retained Hyde & Swigart for representation in the  
11 aforementioned lawsuit.
- 12 30. Plaintiff's counsel answered Defendant's complaint on June 10, 2008, and  
13 provided a copy to the Superior Court and Defendant's counsel via United  
14 States mail. Plaintiff's answer advised Defendant, by written notice, that  
15 Plaintiff was represented by said attorneys with respect to any consumer debt,  
16 and contained said attorneys' names and address.
- 17 31. Defendant subsequently acknowledged receipt of Plaintiff's answer.
- 18 32. Despite Defendant's knowledge that Plaintiff was represented by counsel,  
19 Defendant continued to communicate with Plaintiff by sending a letter to  
20 Plaintiff on July 23, 2008. In its letter, Defendant proposed a "conditional  
21 settlement," which waived all statute of limitations, eliminated the the parties  
22 right to a jury trial, and awarded attorney's fees and costs to Defendant.
- 23 33. Defendant's communication with Plaintiff violated 15 U.S.C. § 1692c(a)(2)  
24 and Cal. Civ. Code § 1788.14(c) as it was a communication to Plaintiff after  
25 Defendant knew he was represented by an attorney. Because Defendant  
26 violated 15 U.S.C. § 1692c(a)(2), it violated Cal. Civ. Code § 1788.17.
- 27  
28

34. In seeking attorney's fees, Defendant violated 15 U.S.C. § 1692f(1) as it constitutes an attempt to collect an amount not authorized by the agreement creating the debt or permitted by law. Because Defendant violated 15 U.S.C. § 1692f, it violated Cal. Civ. Code 1788.17.

35. Defendant's communication to Plaintiff constituted a false, deceptive, or misleading representation or means in connection with the debt collection in violation of 15 U.S.C. § 1692e. Because Defendant violated 15 U.S.C. § 1692e, it also violated Cal. Civ. Code § 1788.17.

### CAUSES OF ACTION

#### COUNT I

#### VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

#### 15 U.S.C. §§ 1692 ET SEQ.

36. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

37. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

38. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from Defendant.

#### COUNT II

#### VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

#### CAL. CIV. CODE §§ 1788-1788.32

39. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

40. The foregoing acts and omissions constitute numerous and multiple violations of the RFDCPA.

41. As a result of each and every violation of the RFDCPA, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from Defendant.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays that judgment be entered against Defendant, and Plaintiff be awarded damages from Defendant, as follows:

**COUNT I**

**FAIR DEBT COLLECTION PRACTICES ACT**

**15 U.S.C. §§ 1692 ET SEQ.**

- 42. An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- 43. An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- 44. An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3).

**COUNT II**

**ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**

**CAL. CIV. CODE §§ 1788-1788.32**

- 45. An award of actual damages pursuant to California Civil Code § 1788.30(a);
- 46. An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
- 47. An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

**TRIAL BY JURY**

48. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Date: 7/29/08

**Hyde & Swigart**

By: 

Joshua B. Swigart  
Attorneys for the Plaintiff

**HYDE & SWIGART**  
San Diego, California



JS 44 (Rev. 12/07)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Steven Heath

(b) County of Residence of First Listed Plaintiff San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Joshua Swigart, Hyde & Swigart, 401 Camino Del Rio S,  
Ste. 301, San Diego, CA 92108, 619-233-7770

## DEFENDANTS

Legal Recovery Ltd.

County of Residence of First Listed Defendant San Diego

NOTE: CLERK OF U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY 08 CV 1414 JM AJB

Attorneys (If Known)

Unknown

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):  
FDCPA, 15 U.S.C. § 1692 et seq.; RFDCPA, Cal. Civ. Code § 1788-1788.32

Brief description of cause:  
Violations of federal and California statutes in abusive debt collection practices.

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐ DEMAND \$ 75,000.00

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

07/29/2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 153674

AMOUNT

d350

APPLYING IFP

JUDGE

MAG. JUDGE

ORIGINAL

**UNITED STATES  
DISTRICT COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

**# 153679 - TC**

**August 05, 2008  
14:04:26**

**Civ Fil Non-Pris**

USAO #.: 08CV1414

Judge.: JEFFREY T MILLER

Amount.:

\$350.00 CK

Check#.: BC2509

**Total-> \$350.00**

FROM: STEVEN HEATH

VS

LEGAL RECOVERY LAW OFFICES